Supreme Court, U.S.
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No.

In The
Supreme Court of the United States
October Term, 1994

RHODA GROSSBARD, RHODA GROSSBARD
Conservator of the Property of
JULES GROSSBARD and DAVID GORDON
Petitioners,

v.

PRESIDENT CONTAINER, INC., MARVIN GROSSBARD, GEORGE GROSSBARD, MARVIN GROSSBARD and GEORGE GROSSBARD as Executors of the Estate of ROSE GROSSBARD, JILLDARVY REALTY CORPORATION
Respondents,

and

IN THE MATTER OF THE ESTATE OF ROSE GROSSBARD, DECEASED.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Under the Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), Equal Protection and Due Process doctrines, where there has been no so-called " state action " by any private party and none alleged, may a United States District Court complaint, seeking remedies due to denied access to state judicial process for a hearing on the merits, be arbitrarily dismissed with prejudice, extinguishing thereby a petitioner's fundamental Constitutional rights ?

2. Does denial of a victim's rights, assured by Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), to meaningfully access judicial process for a hearing on the merits, thereby insulating admitted wrongdoers from remedies for looting, ongoing concealment frauds and other violations of ERISA, 29 U.S.C. 1001 et seq. and other law, also immunize them ?

PARTIES TO THE PROCEEDING

All parties to the proceedings below are parties before this court. The named respondents are an interrelated group: two private corporations, President Container, Inc., a New York franchised, New Jersey situated corrugated box manufacturer, and one of President's cash flow derivative entities, Jilldarvy Realty Corporation, a New Jersey franchised real estate holding company, both controlled by George Grossbard and Marvin Grossbard, New Jersey residents, the two surviving, youngest of deceased Rose Grossbard's four children. Rose Grossbard's New Jersey estate has always been and remains inextricably intertwined.

Jules Grossbard was the eldest of Rose Grossbard's two other sons, both deceased. The petitioners, New York residents, are Rhoda Grossbard, Jules Grossbard's wife from 1938 and Conservator from 1980, and David Gordon, Jules Grossbard's eldest son.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	10
I. The Decision Below Confirms A Denied Access To Judicial Process Result That Conflicts With Logan v. Zimmerman, 455 U.S. 422 (1982) and Decisions In At Least Four Other Circuits	10
II. The Decision Below Conflicts With Decisions Of Other Courts Of Appeals On A Second Recurring Logan Concept	11
III. The ERISA Related Decision Below Is Dangerous Because It Emanates From The Second Circuit And Will Be Cited To Reference The Published Underlying Arbitrary Decision Protecting Looters	12
CONCLUSION	13

TABLE OF AUTHORITIES

Cases	Page
Ambus v. Granite Bd. of Educ., 975 F.2d 1555 (10th Cir. 1992)	10
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)	10
Morrison v. Lipscomb, 877 F.2d 463 (6th Cir. 1989)	11
Reshard v. Britt, 839 F. 2d 1499 (11th Cir. 1988)	10
Save Our Dunes v. Alabama Dept. of Environmental Management, 834 F. 2d 984 (11th Cir. 1987)	10
Spruytte v. Walters, 753 F. 2d 498 (6th Cir. 1985, cert. denied, 474 U.S. 1054, 1986)	11
United States v. Carmack, 329 U.S. 230 (1946)	9
Watts v. Burkhart, 854 F.2d 839 (6th Cir. 1988)	11

United States Constitution and Statutes **Page**

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES..... 3

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, SECTION I..... 3

EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA), 29 U.S.C. § 1001 et seq..... 3

THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO), 18 U.S.C. § 1961 et seq..... 3

FEDERAL RULES OF CIVIL PROCEDURE, RULE 4..... 3

FEDERAL RULES OF CIVIL PROCEDURE, RULE 60 (b) (6)..... 3

TITLE 28, UNITED STATES CODE, § 455 (b) (1)..... 3

Other Authorities

Ronald D. Rotunda, John E. Nowak and J. Nelson Young, Treatise On Constitutional Law, West 1986 (Revised 1992)..... 9

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PETITION FOR WRIT OF CERTIORARI

Petitioners Rhoda Grossbard and David Gordon respectfully request that a writ of certiorari be issued to review the

judgement of the United States Court of Appeals for the Second Circuit entered on September 20, 1994.

OPINIONS BELOW

The misdated opinion of the United States District Court for the Southern District of New York, filed January 10,1994, is reported at 840 F. Sup. 296 (Pet. App. 5A). The September 20, 1994 opinion of the United States Court of Appeals for the Second Circuit is not reported (Pet. App. 3A).

JURISDICTION

The judgement and opinion of the Court of Appeals was entered September 20, 1994 (Pet. App. 3A). This Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth and Fourteenth Amendment, Section 1. to the Constitution Of The United States, the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., and The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq. are involved with this matter, as hereinafter respectively indicated.

STATEMENT OF CASE

This petition adddresses the ultimate consequences of an " arbitrary " January 10, 1994 federal decision compounding " arbitrary " state decisions, each qualifying under the definition in United States v. Carmack, 329 U.S. 230, 243-44 n. 14 (1946). Such decisions are those that seem irrational because they conflict with factual records, conflict with statutes or precedents, or contradict themselves. Here every qualification has been exceeded, resulting in petitioners having never had a hearing on the merits in any jurisdiction.

The January 14, 1993 New York Southern District Complaint asserts immediately the action arose under the Fifth and Fourteenth Amendments to the Constitution of the United States, and that impaired Constitutional rights to Due Process and Equal Protection were specifically protected by the United States Supreme Court doctrines enunciated in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982). The Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq., impact various aspects. The Complaint and its Exhibits A, B and C extensively and meticulously illuminate various kinds of ERISA and RICO violations, including a substantial, clear chronology of repeated predicate acts and proof of an indisputable, massive, willful Rule 60 (b) (6) ongoing concealment fraud on the New York Southern District Court and petitioner Rhoda Grossbard, commencing with her original federal action, dismissed without prejudice for lack of complete diversity, before, at respondents' invitation, she sued them in New Jersey.

After exhibiting extraordinary in person partiality to respondents' same lead New York attorney representing them since 1981, the District Court judge, despite repondents having not answered, flatly refused to permit submission of any amended complaint (concerning, among other things, concealment of ERISA and RICO violations and on-going cover-up frauds by respondents and their attorneys) after petitioners had contacted high-ranking United States Labor Department ERISA and other federal enforcement attorneys. Petitioners brought out these violations of Federal Rules of Civil Procedure Rule 4, and 28 U.S.C. § 455(b)(1) on pages 12 and 23 of their Second Circuit May 28, 1994 Brief and page 5 of their July 14, 1994 Reply Brief, to no avail.

Among other aspects, this matter concerns looting of assets, in amounts exceeding tens of millions of dollars in value (including assets the respondents flatly admitted stealing in New

Jersey court filings), and massive, repeated frauds by the respondents, their accountants and attorneys (including a bogus, sham, fraudulent alleged counterclaim, a fake will, and a fabulously fraudulent, inherently contradictory cover story, concocted using transparently fabricated, pre-signed-in-blank typing paper and business forms, composed by their first and still current lead New York lawyer, to facilitate, conceal and mischaracterize their intertwined looting schemes and associated repeated extortion behavior).

The January 14, 1993 Complaint, and its meticulously arranged, separately bound, Exhibits A, B and C, comprise a record so clear, complete, comprehensive and carefully compiled that, quite contrary to the arbitrary erroneous District Court Opinion and Order, NO COMPLAINT CONFUSION ABOUT THESE DEFENDANTS, THEIR ONGOING UNLAWFUL BEHAVIOR AND THIS CASE IS ACTUALLY POSSIBLE.

The Complaint's exhibited affidavits (and their supporting exhibits) trace long patterns of wanton, willful and extremely malicious unlawful behavior by the individual respondents against their now deceased elder brother Jules Grossbard. Initiated after Jules Grossbard was debilitated by a serious heart attack, and intensified after he was confirmed aphasic, paralyzed and totally disabled from a massive stroke, confining him to the New York nursing home where he died, this behavior includes a vicious string of predicate acts, constituting particularly egregious civil racketeering behavior and obvious ERISA violations (the totality of which has only partially emerged, due to respondents' undenied concealment frauds). One example: respondents intentionally, surreptitiously cancelled, and then concealed that they had cancelled, a small ERISA group life insurance policy covering the life of Jules Grossbard, while he was alive in the New York nursing home, AFTER they confirmed he was in fact aphasic, paralyzed and totally disabled.

The accurate caption for the matter below, appearing on petitioners' January 14, 1993 New York Southern District Complaint and all of petitioners' subsequent submissions within the Second Circuit was, despite petitioners' repeated objections, variously modified improperly by omissions on certain respondent submissions, docket entries, and the September 20, 1994 final Order of the Court of Appeals for the Second Circuit, whose Clerk had originally ordered conformance to the District Court caption. Ultimately, a November 8, 1994 caption-corrected Second Circuit docket page was mailed to all parties by the Second Circuit Clerk (Pet. App.1A).

The original District Court's 1993 Docket Sheet caption omission of " and IN THE MATTER OF THE ESTATE OF ROSE GROSSBARD, DECEASED " was important because it created and perpetuated an embedded error in the Second Circuit official record going to the core of both the substantial and procedural case history.

Specifically, two actions consolidated in New Jersey's Superior Court. For an accounting, discovery and distribution from the estate of Jules Grossbard's mother Rose Grossbard, which had been totally looted of everything by his younger brothers, including her one-third of the stock in President Container, Inc. and its derivative entities; and the second action, consolidated in Bergen County at the respondents' request, concerning, among other things, repeated extortion efforts by the respondents, and massive frauds and thefts perpetrated on the aphasic, paralyzed, totally disabled Jules Grossbard and his wife Rhoda Grossbard, relating to Jules Grossbard's life-time employment contract with President Container, Inc., and his option on a different one-third interest in President Container, Inc. and its derivatives owned by Marvin and George Grossbard.

Surfacing fabricated promissory note forms (originally signed in blank by Rhoda Grossbard's deceased husband Jules for

financing securities transactions and previously stolen by the respondents from his President Container office), 7 years after he was confirmed aphasic, paralyzed and totally disabled, the defendants belatedly introduced in New York's Supreme Court, in an action being discontinued, a bad faith bogus counterclaim they knew could not exist as a matter of law in any jurisdiction, in order to create a procedural sham in New Jersey's Bergen County Superior Court. The individual respondents had at first denied any New York jurisdiction and repeatedly invited Rhoda Grossbard to sue them in New Jersey, before in bad faith reversing their jurisdictional argument when she accepted their invitation.

The consolidated actions were dismissed without prejudice by New Jersey's then Bergen County Chancery judge and unconstitutionally directed back to New York's courts. This 1987 dismissal occured AFTER the issuing Bergen County Chancery judge had been notified by New Jersey's Supreme Court of his mandatory retirement for repeated judicial incompetence. Chronologically, petitioner Rhoda Grossbard, a New York citizen in New Jersey's courts, was his last victim.

The aberrant 1987 opinion recognized, for the first time, the petitioners' previously illuminated and reiterated assertion respondents used fraudulent documents, fabricated on presigned forms and otherwise blank paper (originally raised in petitioner's obviously unread July 29, 1983 New Jersey Reply Certification with exhibits), yet abdicated New Jersey's jurisdiction over the consolidated matter and directed it back to the courts of New York, the citizenship state of Rhoda Grossbard and her deceased husband Jules.

New Jersey's Superior Court, Appellate Division modified this unconstitutional Chancery decision to make it slightly less unconstitutional, by agreement with recognition of an overall controversy and addition of a specific abdication of New Jersey's exclusive constitutional jurisdiction over the looted New Jersey

estate of Rose Grossbard (which had been created when Marvin and George Grossbard, assisted by certain President Container employees, surreptitiously probated a fake, cosmetic will for Rose Grossbard in New Jersey's Bergen County, AFTER they personally looted it of her one-third stock interest in President Container, Inc. and its derivatives).

Probating of the cosmetic, fake will in Bergen County, New Jersey was done because respondents Marvin and George Grossbard were fully aware of Rose Grossbard's genuine will, drafted for probate in New York by her deceased New York lawyer of many years, bequeathing her one-third stock interest in President Container, Inc. and its complex of derivative entities and properties to her eldest son Jules Grossbard, who never recovered from the stroke that left him aphasic, paralyzed and totally disabled in the New York nursing home. The huge cumulative New York nursing home bill for Jules Grossbard's care was never paid by the repondents, despite written contractual and oral promises, resulting in a very large outstanding judgement in New York against respondent Rhoda Grossbard by the nursing home. Petitioners' ongoing litigation expenses, in three jurisdictions, resulting from respondents unlawful behavior, became insufferable years ago.

After exhausting her remedies in New Jersey, Rhoda Grossbard petitioned New York's highest courts, which refused to accept New Jersey's abdicated jurisdiction, resulting in petitioners' January 14, 1993 New York Southern District Complaint. It was referred by the Clerk to District Judge William C. Conner, who had without prejudice dismissed petitioner Rhoda Grossbard's original 1981 federal complaint for lack of complete diversity (the real, New York franchised, President Container, Inc. was then, and still is, a New York corporation, while the other respondents are New Jersey persons).

At the time of the original 1981 federal action (which was commenced without the knowledge of petitioner David Gordon,

who was then working in Los Angeles, California) neither petitioner was aware a second, secret, bogus New Jersey President Container, Inc., a non-existent entity whose phony New Jersey seal (copies of which, accompanied by 1976 signatures of respondents George Grossbard and Marvin Grossbard's wife Beatrice, from Bergen County New Jersey real estate records, are reproduced on page 7 of petitioners' January 14, 1993 federal complaint) and feigned existence the respondents had used to conceal their looting of at least $400,000 of the cash and cash proceeds of publicly traded securities in Rose Grossbard's estate.

The existence, purpose and activity of this concealed looting mechanism is further extensively documented in David Gordon's April 1991 Affidavit to New York's Court of Appeals and its exhibits of additional New Jersey public record real estate documents (accidentally discovered during a 1991 public records search) and specific legended color photographs, among the many other documents in the Exhibit A volume to petitioners' January 14, 1993 federal complaint. Contrary to the misdated District Court Opinion and Order, actually filed January 10, 1994, petitioners' complaint did NOT argue that the real, New York State franchised President Container, Inc. was incorporated in New Jersey. Rather, that all the exhibited indisputable proof concerning this particular secret, New Jersey looting mechanism and its bogus seal (all of which respondents' same lead New York counsel since 1981 had full knowledge of then), was, among other things, part of a larger Rule 60(b)(6) concealment fraud.

Petitioners, who properly and timely moved, in fully, meticulously memorialized procedure in all jurisdictions, including New York, to preserve all statute of limitation rights and prevent any substantive forfeiture of claims (including frightfully expensive representation by one of New Jersey's largest and most respected law firms) were shocked to find the District Court's January 10, 1994 Opinion and Order (Pet. App. 5A) was constructed from a

truly arbitrary, convoluted tautology mix of two sources: first, a totally inapplicable concept, never alleged and nowhere appearing in this matter, the misnomered concept of so-called " state action " by private parties (at the Second Circuit's September 19, 1994 tape-recorded oral argument, petitioner David Gordon specifically noted the section the inapplicable " state action " type cases had been lifted from in Treatise On Constitutional Law, by Rotunda and Nowak, a section adjacent to, but quite distinct from the professors' chapter on " THE RIGHT TO JUDICIAL PROCESS-ACCESS TO THE COURTS," which, from its 1986 appearance, has been founded on the Logan case). The second source for the January 10, 1994 District Court Opinion and Order was the respondents' pervasively fraudulent July 23, 1993 Motion To Dismiss submission, which was so fraudulent and frivolous that respondents' New York attorney elected to omit from submitting to the Second Circuit, as part of his June 1994 Supplemental Appendix, a July 1993 Affidavit of respondent Marvin Grossbard declaiming any knowledge of the above-referenced, bogus corporate seal for the non-existent, second New Jersey President Container entity, used to loot deceased Rose Grossbard's cash and negotiable securities proceeds (despite contiguous 1976 signatures of his wife Beatrice Grossbard and brother, respondent George Grossbard).

Coupled to a separate premise that no " government action " was involved with the decisions of the highest courts of New Jersey and New York in this matter, the January 10, 1994 District Court dismissal with prejudice Order (Pet. App. 5A), (summarily affirmed by the unpublished, September 20, 1994 Second Circuit Order (Pet. App. 3A), contradicts itself and is otherwise internally inconsistent, conflicts with the factual record, precedent and statute, and is disconnected from reality e.g. the highest courts of New Jersey and New York are indisputably parts of those states' governments, contrary to the January 10, 1994 dismissal Order. In short, the January 10, 1994 District Court

Order, and September 20, 1994 Second Circuit Court of Appeals Order, as noted above, are truly " arbitrary " decisions within the meaning of United States v. Carmack, 329 U.S. 230, 243-44 n.14 (1946), resulting in a perpetuation of petitioners' denied access to judicial process, rights protected by the Logan v. Zimmerman doctrines. Despite exhausted remedies in New Jersey, New York and the Second Circuit, this matter has still not been heard on the merits in any jurisdiction.

The January 14, 1993 Southern District Complaint requested, verbatim, the exact same hearing-on-the-merits relief requested and arbitrarily denied at all levels of New Jersey's courts, jurisdictionally denied by New York's highest courts, and finally arbitrarily denied by the New York Southern District Court on January 10, 1994 and the Court of Appeals for the Second Circuit on September 20, 1994.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Confirms A Denied Access To Judicial Process Result That Conflicts With Logan v. Zimmerman, 455 U.S. 422 (1982), And Decisions In At Least Four Other Circuits

The following six decisions support petitioners' argument below concerning denied access to judicial process and the resulting deprivation of fundamental rights to Equal Protection and Due Process:

Save Our Dunes v. Alabama Dept. of Environmental Management, 834 F.2d 984 (11th Cir. 1987) (See esp. 834 F.2d at 986 n.2 and discussion pp.986-89)

Reshard v. Britt, 839 F.2d 1499 (11th Cir.1988)

Ambus v. Granite Bd of Educ., 975 F.2d 1555 (10th Cir. 1992)

Spruytte v. Walters, 753 F.2d 498 (6th Cir. 1985, cert. denied, 474 U.S. 1054, 1986)

Watts v. Burkhart, 854 F.2d 839 (6th Cir. 1988)

Morrison v. Lipscomb, 877 F.2d 463 (6th Cir. 1989)

II. The Decision Below Conflicts With Decisions Of Other Courts of Appeals On A Second Recurring Logan Concept

The Fourth, Fifth, Sixth and Seventh Circuits have interpreted Logan broadly to support a rule against arbitrary state decisions. The Sixth Circuit, for instance: in Spruytte v. Walters, 753 F.2d 498 (6th Cir. 1985, cert. denied , 474 U.S. 1054, 1986), the court relied on Logan in holding that a state decision violated due process because a state agency had " wilfully " refused to follow state law. It was thus unconstitutionally arbitrary, which is the only way to describe the decisions in the instant matter of New Jersey's courts (dealing with petitioner Rhoda Grossbard's attempts to secure a hearing on the merits of her New Jersey consolidated claims - in light of the subsequent refusal of New York's highest courts to accept New Jersey's abdication of its jurisdiction over the inextricably intertwined estate of Rose Grossbard). Logan itself, of course, also guarantees the right of access to judicial process at a meaningful time in a meaningful way.

In contrast, the First Circuit has repeatedly ruled that Logan not be interpreted to support a rule against arbitrary state decisions deviating from state law.

Realistically, the September 20, 1994 Second Circuit summary decision below, because it specifically endorses the arbitrary January 10, 1994 New York Southern District opinion (which is published and will be cited despite conflicting with the factual record, precedents and statutes, and contradicting itself), is inherently in conflict with both the narrow Logan interpretations of

the First Circuit and the broad interpretations of the Fourth, Fifth, Sixth, and Seventh Circuits.

III. The Decision Below Is Dangerous Because It Emanates From The Second Circuit And Will Be Cited To Reference The Published, Arbitrary, Underlying Opinion Protecting Looters

The decision below absolutely immunizes admitted ERISA and concealment fraud looters of millions of dollars.

The basic factual record of respondent wrongdoing, specifically documented in petitioners' January 14, 1993 federal complaint and its exhibits, is on its face so blatant that separate federal enforcement attorneys, in different agencies, instantly labelled the respondents' long history of frauds, thefts and extortion ERISA and civil RICO violations.

That the Second Circuit decision below will, despite being unpublished, nevertheless be dangerously cited to reference the published, arbitrary, underlying District Court Opinion it specifically endorses is clear. As the authorities tables in petitioners' Second Circuit briefs noted: the published District Court Opinion itself cited a totally non-germane, completely irrelevant case referenced in a " Table Of Decisions Without Reported Opinions " in the Federal Reporter that, having no formal opinion should not, by Second Circuit Rule s 0.23, 28 U.S.C.A. have been cited or otherwise used in an unrelated case.

The underlying January 10, 1994 District Court Opinion is sure to replicate in various forms, be widely exploited repeatedly to insulate other ERISA and concealment fraud looters, and thereby undermine the integrity of ERISA and other protective economic law nationwide. It will also weaken and encourage flouting of Rule 60(b)(6).

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiori on both of the questions presented.[1]

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[1] If the Court elects not to address the issues presented at this time, it is requested that the writ issue and the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinion in Logan, supra.